

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON – AT SEATTLE

R.K.,

Plaintiff,

NO. 04-2338 RSM

vs.

PLAINTIFF'S TRIAL BRIEF

THE CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah corporation
sole, a/d/a "MORMON CHURCH";

Defendant.

I. INTRODUCTION/BACKGROUND FACTS

Plaintiff, R.K., was sexually molested by Jack Onefrey(f/k/a Jack Loholt) on multiple occasions. The molestations occurred at or near property owned by Herman Allenbach, D.D.S., a person plaintiff submits was an agent of the Mormon Church.

Prior to plaintiff's abuse, defendant The Corporation of the President of the Church of Latter-Day Saints (aka COP) was notified of Loholt's abuse of children on at least three separate occasions. First, in January 1972, Scott Pettit advised his father, Richard Pettit of Onefrey's abuse of him. Mr. Pettit immediately advised the then-Bishop of the Church, Randall Borland. Mr. Pettit has testified, and it is believed that he will testify at trial, that he advised Bishop Borland of Onefrey's abuse because he expected Bishop Borland to take some

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LAW OFFICES
GORDON, THOMAS, HONEYWELL, MALANCA,
PETERSON & DAHEIM LLP
ONE UNION SQUARE
600 UNIVERSITY, SUITE 2100
SEATTLE, WASHINGTON 98101-4185
(206) 676-7500 • FACSIMILE (206) 676-7575

1 concrete action with respect to the knowledge. R.K. was abused after the Church was notified
2 by Scott Pettit.

3 The second and third notifications occurred through Herman Allenbach, D.D.S. First,
4 Dr. Allenbach was notified first by his own son, J.A. Dr. Allenbach took no action. Dr.
5 Allenbach received a second notification after R.K.'s first episode of abuse occurred (but prior
6 to other instances of abuse) when R.K.'s parents advised Dr. Allenbach of the abuse of their
7 son. Again, Dr. Allenbach took no action and R.K. suffered additional instances of abuse.

8 II. LEGAL ARGUMENT

9 Liability in this case is straightforward. Plaintiff R.K. is a fault-free plaintiff. The
10 Mormon Church had a statutory and common law duty to protect foreseeable victims of
11 Onefrey, including plaintiff R.K. COP's breach of that duty was a proximate cause of
12 plaintiff's injuries and damages.

13 A. DUTY/LIABILITY ANALYSIS.

14 The Mormon Church's duty to plaintiff arises from multiple sources.

15 First, there was a special relationship between Onefrey and the Mormon Church
16 sufficient to give rise to a duty of protection to foreseeable victims of Onefrey. *See, e.g.,*
17 *C.J.C. v. Corp. of the Catholic Bishop of Yakima*, 138 Wn.2d 699, 725, 985 P.2d 262 (1999);
18 *Niece v. Elmview Group Home*, 131 Wn.2d 39, 929 P.2d 420 (1997); *Peterson v. State*, 100
19 Wn.2d 421, 426, 671 P.2d 230 (1983) (a duty to prevent injury to another exists where a
20 special relationship exists between the defendant and **either** the third party or the foreseeable
21 victim of the third party's conduct). Here, the special relationship between the Mormon
22 Church and Jack Onefrey gave rise to the duty to protect foreseeable victims.

23 Jack Onefrey was a Melchisedek Priest, Assistant Scout Master and youth leader in
24 the Kent 2nd Ward of the Mormon Church. Despite gaining knowledge that he was a
25 pedophile, Church officials took no steps to remove Loholt from those position nor did the
26

1 Mormon Church take any steps to protect potential victims of Loholt. "As in other agency
 2 relationships, a church chooses its officials, directs their activities, and may restrict and
 3 control their conduct" and a church has the "same duties of reasonable care as would be
 4 imposed on any person or entity in selecting and supervising their workers, or protecting
 5 vulnerable persons within their custody, so as to prevent reasonably foreseeable harm."
 6 *C.J.C. v. Corp. of the Catholic Bishop*, 138 Wn.2d at 722. The Mormon Church's failure to
 7 take any action when they learned that Jack Loholt was a pedophile is a proximate cause of
 8 the plaintiff's injuries or damages.

9 The Mormon Church's liability to plaintiff also arises because Mormon Church
 10 officials had a statutory duty to report known instances of child abuse and they failed to do so.
 11 The 1971 version of the mandatory reporting statute provided, in pertinent part:

12 When any. . . clergyman . . . has reasonable cause to believe that
 13 a child . . . is found to be suffering from physical neglect or
 14 sexual abuse, he shall report such incident, or cause a report to
 15 be made, to the proper law enforcement agency. . . .

16 As is evident from the language of the then-existing statute, members of the clergy
 17 were mandatory reporters in 1971. There is no dispute that Bishop Randall Borland was a
 18 member of the clergy, and therefore a mandatory reporter, at relevant times. Furthermore,
 19 there is no dispute but that Bishop Borland was advised that Jack Onefrey was a child
 20 molester.

21 A third source of liability is the Mormon Church's failure to train its hierarchal clergy
 22 and youth leaders on the duty to investigate and/or report known instances of child abuse.
 23 Evidence will be presented at trial that the Mormon Church officials took no steps to inform
 24 their hierarchal clergy of their duties to report known instances of child abuse and/or to
 25 investigate suspicions of child abuse. (Contrary to defendant's assertion, the lack of expert to
 26 testify on this subject does not *ipso facto* mean that there will not be any testimony on this

1 issue). If the jury believes that the failure to train their hierarchal clergy, youth pastors and
 2 youth leaders on the mandatory reporting duties and/or the duty to investigate suspected
 3 instances of child abuse, was a proximate cause of the plaintiff's injuries and/or damages, the
 4 jury can find for the plaintiff.

5 Finally, the Mormon Church owed plaintiff, personally, a duty of protection due to the
 6 mandatory reporting statute. The Washington State Legislature made clear that the purpose of
 7 the mandatory reporting statute is the protection of children – as a whole – and not just limited
 8 or "certain" children. *See, e.g., C.J.C. v. Corp. of the Catholic Bishop*, 138 Wn.2d at 727
 9 citing Laws of 1985, ch. 259 (legislative findings appended to RCW 26.44.030) ("the
 10 Legislature has made clear that the prevention of child abuse is of "the highest priority, and all
 11 instances of child abuse must be reported to the proper authorities who should diligently and
 12 expeditiously take appropriate action" Plaintiff, R.K. was abused because Mormon
 13 officials failed to take steps to protect the "children" of this state. Again, if the jury agrees
 14 that the Mormon Church's failure to take the requisite action was a proximate cause of
 15 plaintiff's injuries, it must also return a verdict in plaintiff's favor.

16 **B. DAMAGE ANALYSIS.**

17 The damages in this case arise are exclusively non-economic in nature. R.K. was
 18 sexually abused at the hands of Jack Onefrey on multiple occasions. R.K. was a young and
 19 impressionable child when the abuse occurred. The nature and extent of the damages Jessica
 20 and Ashley endured as a combined result of Jack Onefrey's abuse, and COP's negligence, will
 21 be the subject of their testimony and the testimony of both plaintiffs' retained expert, Jon
 22 Conte, Ph.D., and defendant's retained expert, Frederick Wise. Dr. Conte will testify that
 23 plaintiff is profoundly affected by the abuse. Among other things, Dr. Conte will testify that
 24 plaintiff was abused at a developmentally sensitive period in his life, that he has not dealt with
 25 the abuse, that he suffers from significant levels of depression and anxiety and that he suffers
 26

1 with PTSD, among other things. Dr. Conte will additionally testify that plaintiff will need
2 years of individual psychotherapy to recover from the abuse. Plaintiff will provide more
3 detailed testimony as to his damages at the time of trial.
4

5 III. CONCLUSION

6 Plaintiff believes that the evidence in his case will strongly support a substantial
7 verdict against the defendant in this case.

8 RESPECTFULLY SUBMITTED this 27th day of September, 2006.

9 GORDON, THOMAS, HONEYWELL,
10 MALANCA, PETERSON & DAHEIM LLP

11 By /s/ Michael T. Pfau

Michael T. Pfau, WSBA No. 24649

mpfau@gth-law.com

Michelle A. Menely, WSBA No. 28353

mmenely@gth-law.com

Co-Counsel for Plaintiff

15 LAW OFFICES OF TIMOTHY D. KOSNOFF

16 By /s/ Timothy D. Kosnoff

Timothy D. Kosnoff, WSBA No. 16586

timkosnoff@comcast.net

Co-Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2006, I electronically filed the foregoing Plaintiff's Trial Brief with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Charles C. Gordon
Jeffrey I. Tilden
Michael Rosenberger
GORDON MURRAY TILDEN
1001 4TH AVE, STE 4000
SEATTLE, WA 98154
206-467-6477
Email: cgordon@gmtlaw.com; jtilden@gmtlaw.com;
mrosenberger@gmtlaw.com

/s/ Michelle Menely
Michelle Menely